No. 438

IN THE

Supreme Court of the United States

October Term, 1949

SOUTHERN RAILWAY COMPANY, a corporation organized and existing under the laws of the State of Virginia,
Respondent

v.

ORDER OF RAILWAY CONDUCTORS OF AMERICA, an unincorporated Association,
Petitioner

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

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CITATIONS

STATUTES

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States

The petitioner, Order of Railway Conductors of America, respectfully prays that a writ of certiorari issue to review the final judgment of the Supreme Court of South Carolina entered in the above entitled cause on August 15, 1949.

OPINIONS BELOW

The first opinion of the Supreme Court of South Carolina is reported in 210 S. C. 121, 41 S. E. 2d 774, and is set forth at R. 31-43. The second opinion is reported in 54 S. E. 2d 816, and is set forth at R. 557-571.

JURISDICTION

The jurisdiction of this court is invoked under Section 1257(3) of Title 28, United States Code.

STATUTES INVOLVED

The pertinent statutes involved are the Railway Labor Act, 45 U.S.C.A., Section 151, *et seq.*, and the Declaratory Judgment Act of the State of South Carolina, Section 660, Code of Laws of South Carolina, 1942, at page 497 of Volume I.

STATEMENT

This case presents the question whether state courts may exercise jurisdiction to determine a dispute of the type over which the National Railroad Adjustment Board has authority under the Railway Labor Act, 45 U.S.C.A., Section 151, *et seq.*, and which was being progressed by petitioner for submission to the Adjustment Board at the time that this suit for declaratory judgment was brought by respondent.

Petitioner is a railway labor union, national in scope, and is the duly accredited bargaining agent and representative of the craft and class of conductors employed by the respondent railroad (R. 1, 5, 513). The respondent is a Virginia corporation operating as a common carrier by railroad in various states including the State of South Carolina (R. 1, 5, 32). The rules, rates of pay and working conditions of conductors employed by respondent are governed by a collective bargaining agreement negotiated between the petitioner and respondent (R. 1, 170; Plaintiff's Exhibit 12 at R. 435). Both petitioner and respondent are subject to the Railway Labor Act (R. 32, 209, 211).

The dispute in controversy arose as follows. On and after

September 7, 1944, certain individual conductors filed time claims against respondent claiming additional pay under Article 5 of their collective bargaining agreement for a 12½ mile "side trip" required of them at Pregnall, South Carolina, an intermediate point on their assigned "straightaway" run between Charleston and Branchville, South Carolina (R. 53-59, 417-425). Respondent paid for the regular "straightaway" trip but declined to pay any additional compensation for the "side trip" (R. 94-95, 112, 126, 427-435). Thereupon, the conductors referred their claims to petitioner as their representative for further handling of the claims in their behalf as provided by the Railway Labor Act (R. 316-317).

Regarding the claims of the individual conductors as valid under the collective agreement, petitioner sought an adjustment with officers of respondent (R. 316-317, 427-435, 843-844). Negotiations were conducted between the parties by correspondence and direct conference in accord with usual and customary practice (R. 56, 128-131, 159-169, 210-211). The dispute related solely to the correct interpretation and application of the collective bargaining agreement (R. 170). Petitioner, in compliance with Section 3(i) of the Railway Labor Act, sought to handle the dispute by conference "up to and including the chief operating officer of the carrier designated to handle such disputes" as a condition precedent to submitting the dispute to the National Railroad Adjustment Board (R. 56, 211, 159-169; 322-324; 426-435; 454).

On April 2, 1945, petitioner through its General Chairman advised the respondent by letter that petitioner intended to submit the claim of Conductor M. K. Lloyd to the Adjustment Board for determination and requested that respondent stipulate that the award of the Board in the Lloyd claim would govern identical claims of other conductors (R. 322-324;

Dfts. Exhibit M at R. 454). No reply was received and negotiations for the settlement of the controversy were still in progress at the time that respondent, on July 12, 1945, commenced this action against petitioner for declaratory judgment in the Court of Common Pleas for Charleston County, South Carolina (R. 211, f. 843-844; 169, f. 675).

The respondent's complaint, brought under the South Carolina Declaratory Judgment Act, Section 660, Code of Laws of South Carolina, 1942, alleged that a controversy existed concerning the rights and obligations of respondent under the collective bargaining agreement entitled "Schedule of Wages, Rules and Regulations of Conductors," effective May 16, 1940; that specifically the controversy consisted of a disagreement between petitioner and respondent as to the proper construction to be placed upon certain provisions of the collective agreement as applied to work to be performed by conductors, and whether the performance of certain services by conductors at Pregnall, South Carolina, might be required of them by respondent without payment of additional compensation (R. 4-14). Respondent prayed for a declaratory judgment or decree "declaring the rights, obligations and other legal relations," of the parties and adjudicating that respondent "is under no legal liability to satisfy said claims or any similar claim which has been made or may be made" (R. 14).

The respondent carrier, claiming that the Adjustment Board procedure is inadequate, made no effort to present the dispute to the Board and instituted this action to obtain a "binding and final" decree designed to deprive petitioner of the procedures of the Railway Labor Act for the settlement, adjustment and determination of the dispute, and to absolve respondent of further compliance with its mandatory duty

of negotiation or compliance with other provisions of the Act (R. 13-14; 524, f. 2094; 527-528).

At every stage of the proceedings petitioner denied the right of the state courts of South Carolina to intervene in and adjudicate a rail labor dispute typical of the kind committed by Congress for determination by the National Railroad Adjustment Board or by other procedures provided in the Railway Labor Act, and which was being progressed under the Act at the time of intervention by the state court.

In its answer to respondent's complaint, petitioner averred that it had been and was handling the claims in dispute in accord with the provisions of the Railway Labor Act; that petitioner was seeking to settle and adjust the claims with respondent by negotiation and collective bargaining as provided in said Act; that petitioner was then seeking to handle the claims in accord with Section 3(i) of the Act "in the usual manner" by negotiation as a condition precedent to filing said claims with the National Railroad Adjustment Board for hearing and determination. Petitioner denied the right of respondent by judicial decree to side-step and by-pass the Railway Labor Act and deny petitioner and the individual conductors represented by it their rights of negotiation and collective bargaining, and their right to submit and obtain a hearing and determination of the dispute by the National Railroad Adjustment Board, or to otherwise proceed under the provisions of the Railway Labor Act (R. 15-25).

After filing its answer, petitioner moved the trial court to dismiss the cause on demurrer on the grounds that the court was without jurisdiction of the subject matter of the action in that it involved a dispute governed by the Railway Labor Act; that Congress, in the exercise of its power over interstate commerce, had provided in the Railway Labor Act the sole

and exclusive procedure for adjustment, settlement and determination of the disputes and controversies of the character alleged in respondent's complaint; that the Railway Labor Act imposed on both parties a mandatory duty of negotiation and that the state court lacked jurisdiction to hear and determine disputes concerning interpretation of collective agreement and thereby to enable respondent to evade its mandatory obligation of collective bargaining. (R. 25-29).

The trial court on April 22, 1946, sustained the demurrer and dismissed the action for lack of jurisdiction of the subject matter and on discretionary grounds (R. 29-31).

Respondent appealed to the Supreme Court of South Carolina from the order of dismissal on demurrer. On February 13, 1947, the Supreme Court of South Carolina reversed the trial court and remanded the cause for trial on the merits (R. 31-43). This decision, not a final judgment, is reported in 210 S. C. 121, 41 S. E. 2d. 774.

In reversing the cause and remanding it for trial on the merits, the Supreme Court of South Carolina construed the Railway Labor Act as providing that (R. 39, f. 155-156):

> "* * * Congress intended that controversies of the character set forth in this case may be adjusted in either of two ways: First, under the authority of the Act by submitting the dispute to the National Railroad Adjustment Board; or, second, by exercising the common law rights of any party to bring an action to construe a contract and have his rights declared. There is concurrent jurisdiction of the subject-matter of a suit of this kind, either by a court of competent jurisdiction or by the National Railroad Adjustment Board."

The South Carolina Supreme Court further held that the action was justified by and fell squarely within the South Caro-

lina Declaratory Judgment Act, Section 660, Code of Laws of South Carolina, 1942 (R. 39).

Prior to trial on the merits, petitioner renewed its objections to maintenance of the action in view of the Railway Labor Act (R. 44). In the course of the trial the petitioner sought to show the steps being taken by it in progressing the dispute under the Act as bearing on the jurisdiction and judicial discretion of the court to enter a final judgment. The trial court refused to admit the proceedings before the Adjustment Board in evidence (R. 206-208, 415-416; Defendant's Exhibit E at R. 457-509), and expressed its impatience with all evidence relating to the petitioner's efforts to follow the procedures provided in the Railway Labor Act, stating (R. 211):

> "We are just rolling empty barrels around here talking about what is in the railroad act. We all admit that the railroad act is here — the railroad is under it; the conductors are under it. All that is true. Why put all that in the record? We are just wasting time."

At the conclusion of the trial on the merits, petitioner again moved the trial court to dismiss the action for lack of jurisdiction of a subject matter governed by the Railway Labor Act, and in the exercise of its discretion, so as to permit the controversy to be determined by the Adjustment Board and by the further procedures provided in the Act (R. 511). The trial court asserted jurisdiction and overruled all grounds urged by petitioner for dismissal of the action (R. 512-528).

In asserting the propriety of judicial intervention the trial court stated in its decree (R. 524):

> "Statistics from the annual reports of the National Railroad Adjustment Board to Congress for the year 1944,

> 1945 and 1946 introduced by plaintiff (respondent) show that that Board has a very large backlog of cases and that it would take several years to secure a decision or award, which would still be subject to a court review entailing a trial de novo. It thus appears that that administrative remedy *is not speedy and adequate*. On the other hand, this court is in a position now to make *a binding and final* declaration that will settle the controversy between plaintiff and defendant." (Emphasis added.)

The trial court entered a final judgment on August 30, 1947, construing the collective agreement in favor of respondent and adjudicating the rights of the parties thereunder as so construed (R. 512-528).

Petitioner appealed from the final judgment of the trial court to the Supreme Court of South Carolina and again renewed its objections and exceptions under the Railway Labor Act (R. 529-535). Petitioner applied for and was granted the right to reargue the jurisdiction of the court to adjudicate a dispute governed by and being processed under the Act (R. 581-584). The issue was extensively argued on appeal. The Supreme Court of South Carolina again denied petitioner's contentions, specifically overruled all of petitioner's exceptions, and adopted and affirmed the final judgment and decree of the trial court (R. 557-559).

QUESTIONS PRESENTED

1. In actions brought by railroad carriers against representatives of their employees, do state courts have jurisdiction to enter declaratory judgments interpreting collective bargaining agreements and declaring the rights of the parties thereunder before such carriers have exhausted the remedies provided by the Railway Labor Act?

2. May state courts intervene in disputes being progressed

under the Railway Labor Act and by-pass and supersede the jurisdiction of the National Railroad Adjustment Board by a binding and final declaratory judgment interpreting a collective bargaining agreement and declaring the rights of the parties thereunder without giving the Adjustment Board the first opportunity to pass on the dispute?

3. May state courts exercise concurrent jurisdiction with the National Railroad Adjustment Board to determine disputes over which the Board has authority?

4. Was the state court's exercise of jurisdiction an abuse of judicial discretion in granting declaratory relief without giving the National Railroad Adjustment Board the first opportunity to pass on the dispute?

5. May state courts terminate collective bargaining in disputes subject to the Railway Labor Act by a binding and final declaration of the rights of the parties in such dispute and in all similar disputes which may arise in the future?

6. Is the South Carolina Declaratory Judgment Act, Section 660 of South Carolina Code of Laws, 1942, as applied, repugnant to the Railway Labor Act?

7. Did the courts of South Carolina deprive petitioner of rights, privileges and immunities under the Railway Labor Act in overruling petitioner's exceptions and objections to maintenance of this action?

REASONS FOR GRANTING THE WRIT

1. The Supreme Court of South Carolina has decided a substantial Federal question of importance in the administration of the Railway Labor Act in a way not in accord with applicable decisions of this court.

2. The decision of the Supreme Court of South Carolina places an erroneous construction on the provisions of the Rail-

way Labor Act in holding that parties subject to the Act have an election of remedies as between its provisions and resort to judicial proceedings and in holding that the Adjustment Board procedure provided in the Act is inadequate.

3. The decision of the Supreme Court of South Carolina is in conflict with the decision of this court in *Order of Railway Conductors vs. Pitney*, 326 U. S. 561, and misconstrues the decision of this court in *Moore vs. Illinois Central Railroad*, 312 U. S. 630.

4. The Supreme Court of South Carolina and other state courts are in conflict with the federal courts as to jurisdiction to adjudicate disputes concerning the interpretation and application of rail collective bargaining agreements subject to the Railway Labor Act.

5. The decision is of national importance. Frequent intervention by state courts in disputes being progressed under the Railway Labor Act will inevitably invite industrial strife and interference with interstate commerce throughout the United States.

ARGUMENT

The impact of this decision and similar decisions in other state courts creates a serious hazard to the proper administration of the Railway Labor Act. At and prior to the time this suit was started petitioner was progressing this dispute in strict adherence to the provisions of the Railway Labor Act. The Act becomes meaningless if its provisions may be nullified and procedure under it terminated at will by invoking declaratory judgment proceedings in the local courts of the forty eight states.

The federal courts have construed the Railway Labor Act as denying jurisdiction to interpret rail collective bargaining

agreements in actions brought to resolve a dispute between a railroad carrier and the representative of its employees, following the decision of this court in *Order of Railway Conductors vs. Pitney*, 326 U. S. 561. Thus, in the following cases the federal courts have denied judicial power to adjudicate such disputes and have held that the Adjustment Board provides the initial and primary remedy.

Order of Railway Conductors vs. Pitney, (1946) 326 U. S. 561

Missouri-Kansas-Texas R. Co. vs. Randolph, 8th Cir. (1947) 164 F. 2d 4

Order of Railway Telegraphers vs. New Orleans, Texas & Mexico Railway Co., 8th Cir. (1946) 156 F. 2d 1

Brotherhood of Railroad Trainmen vs. Texas and Pacific Railway Co., 5th Cir. (1947) 159 F. 2d 822

Illinois Central Railroad Co. vs. Brotherhood of Railroad Trainmen, et al (D. C. Ill., 1949) 83 F. Supp. 930

Atlantic Coast Line Railroad Co. vs. Brotherhood of Railroad Trainmen, et al, decided by the U. S. District Court for the Southern District of Florida on March 30, 1948 (unreported decision set forth in the appendix hereto)

Seaboard Airline Railroad Co. vs. Brotherhood of Railroad Trainmen, et al, decided on March 25, 1949, by the U. S. District Court for the Northern District of Alabama (unreported decision set forth in appendix hereto)

Certain state courts have refused to follow the *Pitney* case and have interpreted the Railway Labor Act as merely providing alternative and concurrent remedies which permit the parties in disputes of this type to elect as between the Rail-

way Labor Act and judicial procedure. The state courts have purported to follow several federal district court cases and the decisions in *Moore vs. Illinois Central Railroad Co.* (1941), 312 U. S. 630, and in the *Washington Terminal Company vs. Boswell (App. D. C.)*, 124 F. 2d 235. Thus, the following state courts have assumed jurisdiction in declaratory judgment actions brought by rail carriers for adjudication of a dispute concerning the interpretation and application of rail collective bargaining agreements.

Southern Railway Company vs. Order of Railway Conductors of America (1947-1949) 210 S. C. 121, 41 S. E. 2d 774; 54 S. E. 2d 816; and see 63 F. Supp. 306

**Delaware, Lackawanna & Western R. Co. vs. Slocum* (N. Y. Court of Appeals, 1949) 87 N. E. 2d 532; and see 56 F. Supp. 634

***Denver, Rio Grande & Western Railroad vs. Brotherhood of Railroad Trainmen, et al*, decided by the State District Court of Denver, Colorado on November 18, 1848 (unreported decision set forth in appendix hereto)

Not only is there a conflict of decision in actions between railroad carriers and employee representatives but there is a lack of harmony concerning the proper interpretation of the Railway Labor Act in suits brought by individual employees. Compare *Adams vs. New York C. & St. L. R. Co.*, 7th Cir., 121 F. 2d 808 and *Evans vs. Louisville & Nashville R. Co.*, 191 Ga. 395, 12 S. E. 2d 611 with *Hampton vs. Thompson*, 5th Cir., 171 F. 2d 535; *United States vs. Missouri-Kansas-Texas R. Co.*, 5th Cir., 171 F. 2d 961; *State vs. Russell* (Mo.), 219 S. W. 2d 340.

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* Petition for certiorari in this case has been filed with this court.

** This case is presently on appeal to the Supreme Court of Colorado.

It is submitted that those courts which have sustained jurisdiction to adjudicate a dispute between a rail carrier and the collective bargaining representative of its employees concerning the construction and interpretation of a collective bargaining agreement have misconstrued the Railway Labor Act and have misinterpreted the decisions of this court. This court has found that the Railway Labor Act precludes judicial jurisdiction in disputes between rail carriers and the rail brotherhoods and uniformly has held that, in the first instance at least, the parties must be relegated to the administrative remedies and procedures provided in the Act. *General Committee, etc. vs. Southern Pacific Co.*, 320 U. S. 338; *General Committee, etc. vs. Missouri-Kansas-Texas R. Co.*, 320 U. S. 323; *Switchmen's Union of North America vs. National Mediation Board*, 320 U. S. 297; *Brotherhood of Railroad Trainmen vs. Toledo, P. & W. R. Co.*, 321 U. S. 50; *Order of Railway Conductors vs. Pitney*, 326 U. S. 561.

This court has recognized the propriety of judicial action in railway labor disputes only where an administrative remedy was not available. Thus, a right provided in the Railway Labor Act and otherwise lost if not protected by the courts has been found to warrant judicial intervention. *Virginia Railway Co. vs. System Federation*, 300 U. S. 515. Also, as pointed out by this court in *Steele vs. Louisville & Nashville R. Co.*, 323 U. S. 192, the administrative remedies of the Railway Labor Act may not, in some instances, afford adequate relief to an *individual* employee, either because the administrative agency cannot give the relief sought in a judicial proceeding or because the individual's claim is opposed by his collective bargaining representative. The individual employee is, therefore, permitted to maintain a judicial action because of the absence of an available administrative remedy under the Rail-

way Labor Act. See: *Moore vs. Illinois Central Railroad*, 312 U. S. 630; *Steele vs. Louisville & Nashville R. Co.*, 323 U. S. 192; *Tunstall vs. Brotherhood of Locomotive Firemen & Enginemen*, 323 U. S. 210; *Elgin, Joliet & Eastern Ry. Co. vs. Burley*, 325 U. S. 711, 327 U. S. 661.

The Supreme Court of South Carolina refused to recognize the construction of the Railway Labor Act by this court and erroneously seized on the decision in *Moore vs. Illinois Central Railroad*, 312 U. S. 630, as confirming a general grant of jurisdiction in the courts to be exercised concurrently with the National Railroad Adjustment Board in determining disputes of this character.

In *Moore vs. Illinois Central Railroad*, *supra*, an individual employee brought an action for damages for wrongful discharge. This suit by an individual employee did not affect the collective rights of the craft or interfere with or by-pass the provisions of the Railway Labor Act. Moore sued in his individual right for damages, accrued and future. *Moore vs. Illinois Central Railroad*, 5th Cir., 136 F. 2d 412. His suit presented a traditional common law action for damages. *Order of Railroad Telegraphers vs. Railway Express Agency*, 321 U. S. 342. The carrier defended on the ground that Moore had failed to exhaust his remedy before the National Railroad Adjustment Board. The Adjustment Board had no power or authority to award the accrued or future damages claimed by Moore. Its only authority was to grant reinstatement with back pay. Also, as this court stated in *Steele vs. Louisville & Nashville R. Co.*, 323 U. S. 192, the remedy of the Adjustment Board is generally not available to an individual employee. This court properly held that the Railway Labor Act did not supersede the right of an individual employee to maintain a common law action for damages. The language used

by this court in the *Moore* case, while applicable to the situation before it, clearly was not intended to be applicable and was not directed toward a suit between a rail carrier and the representative of its employees concerning interpretation of the collective agreement, the subject matter of which directly infringes on the jurisdiction of the Adjustment Board and supersedes the mandatory provisions of the Railway Labor Act as to collective bargaining.

In *Washington Terminal Company vs. Boswell*, 124 F. 2d 235, the carrier's right to bring a declaratory judgment action to review an award of the National Railroad Adjustment Board was denied. By way of dictum the court said that prior to submission of the dispute to the Adjustment Board the carrier had the option to pursue either a judicial remedy or follow its administrative remedy under the Railway Labor Act. This court granted certiorari in 315 U. S. 795. Reargument of specific questions was requested by this court, one of which was:

> "Whether either party to a dispute over which the Adjustment Board has authority is precluded from seeking a determination of the dispute by the courts, either before or after submission of the dispute to the Board."

Since the *Boswell* case was affirmed by an equally divided court in 319 U. S. 732, the question was not decided and the decision does not constitute an authoritative precedent. *Hertz vs. Woodman*, 218 U. S. 205.

In *Order of Railway Conductors vs. Pitney*, 326 U. S. 561, this court denied judicial authority for interpretation of rail collective bargaining agreements in actions between rail carriers and employee representatives and held that such controversies should be submitted to the National Railroad Adjustment Board.

The Supreme Court of South Carolina refused to follow the decision of this court in the *Pitney* case and, in ruling on the order sustaining petitioner's demurrer, sought to distinguish it in 210 S. C. 121, 41 S. E. 2d 774, on the ground that the *Pitney* case involved: (1) a jurisdictional dispute between two unions; (2) a suit for injunction rather than for declaratory judgment and (3) was "complicated" by the dual function of the court in bankruptcy and in equity (R. 40).

These distinctions, it is submitted, are utterly without merit. This court has held that the Railway Labor Act provides in the National Mediation Board the exclusive remedy in "jurisdictional" disputes. *Switchmen's Union of North America vs. National Mediation Board*, 320 U. S. 297; *General Committee, etc. vs. Missouri-Kansas-Texas R. Co.*, 320 U. S. 323; *General Committee, etc. vs. Southern Pacific Co.*, 320 U. S. 338. This court also denied judicial power to interpret rail collective bargaining agreements in the *Pitney* case and held that the parties involved in a "jurisdictional" dispute should submit the question of interpretation to the Adjustment Board. But this court has not held, and the Railway Labor Act does not provide, that the remedy of the Adjustment Board is exclusive in "jurisdictional" disputes but nonexclusive and concurrent with judicial processes in other types of disputes. The Supreme Court of South Carolina erroneously concluded that Congress had created in the same Act an exclusive administrative remedy in the National Mediation Board and a nonexclusive administrative remedy in the Adjustment Board. This anomaly is heightened by the decision of the Supreme Court of South Carolina to the effect that the Adjustment Board remedy is exclusive in respect to "jurisdictional" disputes but nonexclusive in other types of disputes.

The suggestion of the Supreme Court of South Carolina

that this court might have reached a different conclusion had the *Pitney* case involved a declaratory judgment action rather than proceedings for an injunction is wholly erroneous. *Macauley vs. Waterman S. S. Corporation*, 327 U. S. 540, 544, footnote 4.

Finally, the fact that the court in the *Pitney* case exercised the dual function of a court in bankruptcy and a court in equity was a mere circumstance, irrelevant to the principle of whether the Adjustment Board exercises an initial and primary jurisdiction of disputes of this type here involved.

The Supreme Court of South Carolina in the instant case and the New York Court of Appeals in *Delaware, Lackawanna & Western Railroad vs. Slocum*, 87 N. E. 2d 532, emphasized the retention of jurisdiction in the *Pitney* case and erroneously concluded that this court had in fact recognized the concurrent jurisdiction of the Adjustment Board and the courts to interpret rail collective bargaining agreements, and had merely held that a court, in the peculiar circumstances of that case, should exercise equitable discretion to defer its proceedings pending a determination by the National Railroad Adjustment Board. By this interpretation the *Pitney* case is narrowly restricted and the state courts are left free to exercise a jurisdiction in rail labor disputes which is denied to the federal courts.

It is submitted that this conclusion misconstrues the decision in the *Pitney* case. This court, in recognizing the technical nature of such agreements and the specialized character of the National Railroad Adjustment Board, applied the rule which accords primary jurisdiction in the Interstate Commerce Commission for determination of technical fact questions within the specialized province of the Commission. *Great Northern Railway Co. vs. Merchants Elevator Co.*, 259 U. S. 285; *Brown*

& Sons Lumber Co. vs. Louisville & N. R. Co., 299 U. S. 393 and *Mitchell Coal Co. vs. Pennsylvania R. Co.*, 230 U. S. 247.

In the *Pitney* case jurisdiction was retained not to interpret the collective agreement there in dispute, but for the purpose only of further judicial proceeding that might be appropriate following a determination by the Adjustment Board. The settled principle was followed that in the application of the primary jurisdiction rule the court has a discretion to retain jurisdiction pending the administrative determination if further judicial proceedings may be appropriate. *Mitchell Coal Co. vs. Pennsylvania R. Co.*, 230 U. S. 247. But if the cause involves matters solely with the primary jurisdiction of a specialized administrative agency and further judicial proceedings are not involved, it is equally settled that the court should order an immediate dismissal. *Armour & Co. vs. Alton R. Co.*, 7 Cir., 111 F. 2d 913, affirmed in 312 U. S. 195. Accordingly, the retention of jurisdiction in the *Pitney* case clearly did not imply an assertion of concurrent judicial jurisdiction over disputes committed to the jurisdiction of the Adjustment Board. It is submitted that the *Pitney* case interprets the Railway Labor Act in a manner binding on the state as well as the federal courts.

The instant case aptly illustrates the compelling necessity for a specialized tribunal for determination of rail labor disputes involving interpretation of collective agreements, and application of the rule of primary jurisdiction to the National Railroad Adjustment Board is particularly appropriate. The trial court attempted to interpret the collective agreement on the basis of voluminous and conflicting testimony as to the meaning of technical terms in the railroad industry such as "straightaway runs," "turnaround runs," "side trips," "lapbacks," "industrial tracks," "turns within turns," "arbitra-

ries," "yard limit boards," and other terms of technical significance in the railroad industry (R. 88, 174-194, 221, 215-220, 228, 247, 249-252, 325-362, 397-398, 409-414). The evidence ranged over a period commencing with World War I (R. 172-183, 412-414).

In addition, while respondent's witnesses conceded that any "side trip" of "100 miles or less" was compensable as an extra minimum day under Article 5 of the collective agreement (R. 221, 133-137), the respondent claimed that the particular 12½ mile "side trip" here involved was part of the "straightaway" run, and not compensable under established usages and practices (R. 8, 79-87, 227-230). The decision of the trial court is interspersed with generalized findings that the 12½ mile round trip off the side of the assigned "straightaway" run, for which claims were filed, is "substantially the same" as, nor "any different from," and is "similar to," or that there is "nothing exceptional about the length of the track," and that it is "of comparable length" with other "industrial tracks" on which conductors have performed "switching" operations "for many years without demanding or being paid extra compensation" (R. 512-528). These generalized conclusions are asserted in the face of a record which contains *not a scintilla of evidence to support them.* This record *is utterly barren of evidence of "comparable" or "similar" practices and the sole evidence was that*:

(1) The longest side tracks, "industrial" or otherwise, shown to have been regularly "switched" by conductors as a part of a "straightaway" run and regular pay therefore were in fact located at stations *on the assigned "straightaway" run* and were *1800 feet or less in length* — not a round trip of 12½ miles off the side of the "straightaway" run (R. 79-87);

(2) Not a single side track of a mile or more in length on

the whole 8000 miles of the Southern Railway System was identified *and coupled with any showing whatever* that conductors had regularly travelled it as a part of a "straightaway" run without additional compensation or protest;

(3) No single side track of a length "comparable" (*i.e.* a mile or more) to the Pregnall side track was shown to have been regularly operated by conductors on a "straightaway" run except where: (a) the respondent had paid an additional minimum day under Article 5 of the collective agreement (R. 220-221, 535, 539, 541, 769, 858-859, 864-865, 882, 1352-1358); or (b) the respondent had bargained for and obtained an agreement with petitioner providing a special rate of pay for the particular side trip (R. 523, 753-757, 940, 946-956, 1014, 1346, 1757); or (c) the particular operation and rate of pay therefore was in dispute (R. 675, 1020-1025).

The alleged "practice" of conductors to make trips "similar" or "comparable" to the 12½ mile side trip involved in this dispute, without additional pay or protest, is utterly nonexistent. The findings of established usages and practices are drawn from a complete vacuum. It is imperative that interpretation of rail collective bargaining agreements be handled, as provided in the Railway Labor Act, by an expert tribunal specialized in such disputes.

The petitioner did not request a declaration by the state court and contended that the suit should be dismissed and the disputed question of interpretation left for determination by the National Railroad Adjustment Board. A reversal by this court will accomplish that object.

JURISDICTION FOR REVIEW

This court has jurisdiction to review the whole case including the judgment on the first appeal reported in 210 S. C. 121,

41 S. E. 2d 774. Since it was not a final judgment the petitioner had no right of review at that time. *Bostwick vs. Brinkerhoff*, 106 U. S. 3; *Missouri and Kansas Interurban Railway Co. vs. Olathe*, 222 U. S. 185; *Bruce vs. Tobin*, 245 U. S. 18; *Gorman vs. Washington University*, 316 U. S. 98.

Following the judgment in the first appeal the petitioner continued to urge its objections under the Railway Labor Act and was granted the right to reargue them in the second appeal, reported in 54 S. E. 2d 816 (R. 557-571). The Supreme Court of South Carolina has now entered a final judgment in which it specifically overruled each of the petitioner's exceptions including those based on the Railway Labor Act (R. 557, 559). Review by this court is sought at the first opportunity open to petitioner. It is immaterial that in the second appeal the South Carolina Supreme Court held its first appeal to be "the law of the case." *Urie vs. Thompson*, 69 S. Ct. 1018, 1026; *Gant vs. Oklahoma City*, 289 U. S. 98; *Chesapeake & Ohio Railway Co. vs. McCabe*, 213 U. S. 207; *Grays Harbor Co. vs. Coats-Fordney Co.*, 243 U. S. 251; *Georgia Railway and Power Co. vs. Decatur*, 262 U. S. 432; and see *Western Electrical Supply Co. vs. Abbeville Electric Light & Power Co.*, 197 U. S. 299.

This court has frequently reviewed the action of state courts in attempting to intervene in matters initially within the primary jurisdiction of specialized federal administrative agencies. *Texas & Pacific Railway vs. Abilene Cotton Oil Co.*, 204 U. S. 426; *Great Northern Railway Co. vs. Merchants Elevator Co.*, 259 U. S. 285; *Thompson vs. Texas, Mexican R. Co.*, 328 U. S. 134, 147. In addition, petitioner urged in the state courts and contends here that the South Carolina Declaratory Judgment Act, as applied, is repugnant to the Railway Labor Act. *Bethlehem Steel Co. vs. N. Y. State Labor*

Relations Board, 330 U. S. 767; *LaCrosse Telephone Co. vs. Wisconsin Employment Relations Board*, 69 S. Ct. 379.

CONCLUSION

Intervention by state courts in the disputes of interstate railroads and their employees nullifies procedures under the Railway Labor Act by cutting short the mandatory negotiations of the parties and by superseding the jurisdiction of specialized administrative agencies. Frequent judicial intervention must inevitably invite economic strife and interruption of interstate commerce. No employee representative could long survive the financial drain of numerous declaratory judgment actions brought by the rail carriers of the United States in the many hundreds of disputes that arise each year. Employees will inevitably resent judgments deemed to be a mutilating construction of the collective agreement. The Railway Labor Act provides a comprehensive procedure for the settlement and determination of disputes of this character prior to court action and represents many years of legislation by Congress for the protection of interstate commerce. Procedures under it should be protected from interference by state courts.

The petition for writ of certiorari should be granted.

Respectfully submitted

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APPENDIX

The following unreported decisions are referred to in the brief:

"IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER, STATE OF COLORADO

Civil Action No. A 54321 Div. 1

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY,

Plaintiff

vs.

BROTHERHOOD OF RAILROAD TRAINMEN, ORDER OF RAILWAY CONDUCTORS OF AMERICA,

R. H. MCDONALD, as General Chairman of the General Grievance Committee of Brotherhood of Railroad Trainmen; and

O. E. SEVIER, as General Chairman of the General Grievance Committee of Order of Railway Conductors of America

Defendants

FINDINGS AND DECREE

This matter coming on to be heard in open court upon the motions filed by the defendants to dismiss, and the court having heard the arguments of counsel; examined all of the citations of all parties; and, being fully informed in the premises,

The Court Finds:

1. That the defendants, having interposed their motions to dismiss, admit all the material allegations contained in the complaint. *Bennetts, Inc., vs. Krogh*, 115 Colo. 18.

2. That this court has jurisdiction of the subject matter of this action. This suit does not involve the validity, construction or effect of any Federal statute, but, on the contrary, and as alleged in the complaint, seeks determination of plaintiff's rights and liabilities under a certain collective bargaining agreement made between the parties at Denver, Colorado, on May 1, 1945, covering rates of pay, rules and working conditions.

The Railway Labor Act of 1926, as amended in 1934, Sec. 3, (i), provides:

> "Disputes between an employee . . . and a carrier . . . growing out of . . . the interpretation of agreements concerning rates of pay, rules, or working conditions . . . shall be handled in the usual manner up to and including the chief operating officer of the carrier . . . but, failing to reach an adjustment in this manner, the disputes *may* be referred by *petition* . . . to the . . . Adjustment Board . . ."

It is significant that the 1926 Railway Labor Act provided that a "dispute *shall* be referred." It is, therefore, manifestly clear that such a change indicated a clarification of the law's original purpose, and that Congress intended that such disputes may be adjusted in either of two ways, First, under authority of the Act by submitting the dispute to the Adjustment Board, or, Second, by exercising the common law right of any of the parties to bring an action to construe a contract and protect his respective rights. Plaintiff chose to bring an action in this court subsequent to its rejection of defendant's demands, and prior to the submission of the dispute to the Adjustment Board. Thus, having made such election to pursue its judicial remedy, and having complied with the Act "up to and including the chief operating officer of the carrier desig-

nated to handle such disputes," this court should retain jurisdiction and carry the matter through to an adjudication.

Therefore, It is ORDERED, ADJUDGED AND DECREED:

That the motions of the defendants to dismiss the complaint be, and the same hereby are, denied.

HAROLD M. WEBSTER
Judge"

* October 14, 1947.

* Judgment on the merits was subsequently entered in favor of the plaintiff railroad and this cause is now on appeal before the Supreme Court of Colorado.

"UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, *Plaintiff*, vs. BROTHERHOOD OF RAILROAD TRAINMEN, et al, *Defendants*. BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, *Intervenor*.	# 13335 J Civil

ORDER

This cause having been submitted upon the record and supporting affidavits, and the Court having heard the argument of the respective parties, it is upon consideration hereof:

ORDERED AND ADJUDGED:

1. The motion of Brotherhood of Locomotive Firemen and Enginemen (filed March 9, 1948) for leave to intervene, is granted.

2. Plaintiff's prayer for declaratory judgment is denied. The cause is retained on the docket in order to afford the parties an opportunity to apply to the Railway Adjustment Board for an interpretation of the labor contracts involved, after which the Court will consider what, if any, duty rests upon it with respect to the controversy.

DONE AND ORDERED at Jacksonville, Florida, March 30, 1948

[s] LOUIE W. STRUM
U. S. District Judge.

MEMORANDUM

The record presents a typical controversy between a Railway and its employees involving the interpretation of labor contracts regulating working conditions.

Under the Railway Labor Act (45 U.S.C.A. 153, First (i), and in the circumstances here presented, the interpretation of those contracts is initially a function of the Railway Adjustment Board, not the Courts. *Order of Railway Conductors v. Pitney*, 326 U. S. 591, 90 L. Ed. 318; *Order of Railroad Telegraphers v. New Orleans*, 156 Fed. (2) 1; *MK&T R. Co. v. Randolph*, 164 Fed. (2) 4. The same would be true even though the Brotherhood of Locomotive Firemen and Enginemen had not intervened.

[s] LOUIE W. STRUM
U. S. District Judge"

"IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DIVISION OF THE NORTHERN DISTRICT OF ALABAMA

SEABOARD AIR LINE RAILROAD COMPANY, a corporation,
Plaintiff

vs.

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL,
Defendants

CIVIL ACTION No. 6093

This cause, coming on to be heard, was submitted upon motion of several named defendants to dismiss the complaint upon the ground inter alia that the complaint presents no justifiable controversy.

The Court has considered the most able oral arguments of counsel but is persuaded that the motion to dismiss must be granted upon the authority of *Brotherhood of Railroad Trainmen vs. Texas and Pacific Ry. Co.*, 159 F. (2d) 822, reaffirmed in *Hampton, et al, v. Thompson, et al*, 171 F. (2d) 535, and *United States ex rel Deavers v. Missouri-Kansas and Texas RR. Co.*, 171 F. (2d) 961.

No point having been made here that this court should stay the proceedings in this suit until plaintiff has been afforded a reasonable opportunity to present the controversies or grievances described in the complaint to the National Railroad Adjustment Board for its interpretation and decision, it is accordingly ORDERED, ADJUDGED AND DECREED that this action be and the same is hereby dismissed at the costs of the plaintiff, for which execution may issue.

Done, this the 25th day of March, 1949.

(s) SEYBOURN H. LYNNE
UNITED STATES DISTRICT JUDGE"